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ABSTRACT

The Federal Communications Commission (FCC) Report and Policy Statement on Children's Television Programs summarizes the findings of a series of hearings held in response to a petition of Action for Children's Television (ACT), urging that the FCC prohibit sponsorship and commercials in children's programing, forbid product mention by program hosts and require a minimum of 14 hours' children's programs per station per week. The FCC held that elimination of commercial sponsorship was financially impractical, and refused to establish a specific number of hours for children's programs, but stated that stations have a clear obligation to provide children's programing which would be considered in license renewal. The industry was criticized for confining programing to weekends and urged to increase weekday offerings. Restrictions were placed on the number of minutes devoted to commercials and on separation of program and commercial matter. Broadcasters were given time to comply, and further review of compliance was promised. Appendixes includes an issue-oriented summary of hearing testimony, plus names of participants in public panel discussions and oral arguments. (SK)

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FEDERAL COMMUNICATIONS COMMISSION

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CHILDREN'S TELEVISION PROGRAMS

Report and Policy Statement

IR 001 891

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FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19142; FCC 74-1174]

CHILDREN'S TELEVISION PROGRAMS

Report and Policy Statement

In the matter of petition of action for children's television (ACT) for rulemaking looking toward the elimination of sponsorship and commercial content in children's programming and the establishment of a weekly 14 hour quota of children's television programs, Docket No. 19142.

I. *Introduction.* 1. By notice issued January 26, 1971 (Docket 19142, 28 FCC 2d 368, 36 FR 14219) we instituted a wide-ranging inquiry into children's programming and advertising practices.

2. This inquiry was instituted at the request of Action for Children's Television (ACT) and our notice specifically called for comment on ACT's proposal that the Commission adopt certain guidelines for television programming for children. These guidelines are as follows:

(a) There shall be no sponsorship and no commercials on children's television.

(b) No performer shall be permitted to use or mention products, services or stores by brand names during children's programs, nor shall such names be included in any way during children's programs.

(c) Each station shall provide daily programming for children and in no case shall this be less than 14 hours a week, as part of its public service requirement. Provision shall be made for programming in each of the age groups specified below, and during the time periods specified: (i) Pre-school: Ages 2–5 7 a.m.–6 p.m. daily, 7 a.m.–6 p.m. weekends; (ii) Primary: Ages 6–9 4 p.m.–8 p.m. daily, 8 a.m.–8 p.m. weekends; (iii) Elementary: Ages 10–12 5 p.m.–9 p.m. daily, 9 a.m.–9 p.m. weekends.

3. In addition to comments on the specific ACT proposal, the Commission requested interested parties to submit their views on such issues as the proper definition of what constitutes "children's programming", the appropriate hours for broadcasting children's programs, the desirability of providing programs designed for different age groups, commercial time limitations, separation of advertising from programming content, and other areas of concern. The Commission also requested all television licensees and networks to submit detailed information on their current children's programming practices, including a classification of programs as being either entertainment or educational. We gave notice that this information might be used as a basis for formulating rules concerning programming and advertising in children's television.[1]

4. The response to our notice was overwhelming. More than 100,000 citizens expressed their opinions in writing and the accumulated filings fill 63 docket volumes. This material falls into three main categories: formal pleadings, programming data from stations and networks, and informal expressions of opinion (letters and cards).[2]

5. To apprise itself further of the various issues involved in children's television, the Commission conducted panel discussions focusing on specific areas of interest on October 2, 3, and 4 of 1972.[3] Forty-four individuals took part in these discussions, including representatives of citizens groups, broadcasters, advertisers and performers. These panel discussions were followed by oral argument which was presented before the Commission on January 8, 9, and 10 of 1973.[4] Forty-one persons participated in the oral argument, representing public interest groups, advertisers, educators, licensees, producers and performers.

6. The record in this proceeding includes 1252 pages of transcript in addition to further comments and the previously mentioned 63 docket volumes.

II. *Children's Television Programming.* 7. We believe that proposals for a set amount of programming for children of various age groups should appropriately be considered in terms of our statutory authority and against the background of the Commission's traditional approach to program regulation.

A. *Scope of Commission authority concerning programming.* 8. Section 303 of the Communications Act, 47 U.S.C. 303, confers upon the Commission broad authority to regulate broadcasting as the "public convenience, interest, or necessity" requires. On the basis of this standard, the Commission is empowered by section 303(b), 47 U.S.C. §303(b), to "[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class." (emphasis supplied.) The Commission is further authorized to: [c]lassify radio stations"; provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest"; and "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act." 47 U.S.C. 303 (a), (g) and (r).

9. The Supreme Court has made it clear that these provisions do not limit the Commission to the role of a "traffic officer, policing the wave lengths to prevent stations from interfering with each other." "National Broadcasting Co. v. United States," 319 U.S. 190, 215 (1943). "[T]he Act," the Court held, "does not restrict the Commission merely to supervision of the traffic." Id. at 215–16. The Commission neither exceeds its powers under the Act nor transgresses the First Amendment "in interesting itself in general program format and the kinds of programs broadcasts by licensees." "Red Lion Broadcasting Co. v. FCC," 395 U.S. 367, 390 (1969). But, while the Commission's statutory authority is indeed broad, it is certainly not unlimited. Broadcasting is plainly a medium which is entitled to First Amendment protection. "United States v. Paramount Pictures, Inc.", 334 U.S. 131, 166 (1948). Although the unique nature of the broadcasting medium may justify some differences in the First Amendment standard applied to it, it is clear that any regulation of programing must be reconciled with free speech considerations. In Section 326 of the Act, 47 U.S.C. 326, Congress has expressed its concern by expressly prohibiting "censorship" by the Commission. For these reasons, the Commission historically has exercised caution in approaching the regulation of programing:

> [I]n applying the public interest standard to programing, the Commission walks a tightrope between saying too much and saying too little. In most cases it has resolved this dilemma by imposing only general affirmative duties—e.g., to strike a balance between various interests of the community, or to provide a reasonable amount of time for the presentation of programs devoted to the discussion of public issues. The licensee has broad discretion in giving specific content to these duties * * *. Given its long-established authority to consider program content, this approach probably minimizes the dangers of censorship or pervasive supervision. Banzhaf v. FCC, 405 F. 2d 1082, 1095 (D.C. Cir 1968), cert. denied "subnom. Tobacco Institute v. FCC," 396 U.S. 842 (1969).

We believe that this traditional approach is, in most cases, an appropriate response to our obligation to assure programing service in the public interest and, at the same time, avoid excessive governmental interference with specific program decisions.

B. *History of general program categories.* 10. In 1929, the Federal Radio Commission adopted the position that licensees were expected to provide a balanced program schedule designed to serve all substantial groups in their communities. "Great Lakes Broadcasting Co.", 3 F.R.C. Ann. Rep. 32, 34 (1929), rev'd on other grounds 37 F. 2d 993, cert. dismissed 281 U.S. 706 (1930). At this time, the Commissioner set forth a number of general programming categories which it believed should be included in the broadcast service of each station:

> [T]he tastes, needs, and desires of all substantial groups among the listening public should be met, in some fair proportion, by a well-rounded program, in which entertainment, consisting of music of both classical and lighter grades, religion, education and instruction, important public events, discussions of public questions, weather, market reports, and news, and matters of interest to all members of the family find a place. Id.

In listing these programming categories, the Commission made it clear that it did not "propose to erect a rigid schedule specifying the hours or minutes that may be devoted to one kind of program or another." Id. Its purpose was only to emphasize the general character of programming to which licensees must con-

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[1] The scope of the Commission's inquiry in this proceeding did not extend to the issues of violence and obscenity in television programming. The House and Senate Committees on Appropriations, however, have requested the Commission to submit a report by December 31, 1974, outlining the actions we plan to take in these areas. We will, therefore, address the problems of violence and obscenity at that time.

[2] A digest of comments appears in Appendix A.

[3] Participants in the panel discussions are listed in Appendix B.

[4] Oral argument participants are listed in Appendix C.

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form in order to fulfill their public service responsibility. While the Commission's list did include "matters of interest to all members of the family", children's programs were not specifically recognized as a distinct category entitled to special consideration.

11. In 1946, the Federal Communications Commission reaffirmed the FRC's emphasis on a "well-balanced program structure", and noted that since at least 1928 license renewal applications had been required "to set forth the average amount of time, or percentage of time, devoted to entertainment programs, religious programs, educational programs, agricultural programs, fraternal programs, etc." FCC, "Report on Public Service Responsibility of Broadcast Licensees" 12–13 (1946) (hereinafter cited as The Blue Book). In line with the views of its predecessor, the FCC did not recognize programs for children as an independent category and no suggestion was made as the percentage of time that should be devoted to any category.

12. The Commission's first recognition of children's programs as a distinct category came in the 1960 statement of basic programming policy. "Report and Statement of Policy Re: Programming", 20 P&F R.R. 1901 (1960). In this report, "Programs for Children" was listed as one of fourteen "major elements usually necessary to meet the public interest, needs and desires of the community." Id. at 1913. The fourteen elements included such matters as educational programs, political broadcasts, public affairs programs, sports, entertainment and service to minority groups. No special emphasis was given to children's programming over and above these other categories, and again the Commission made it clear that its list was "neither all-embracing nor constant" and that it was not "intended as a rigid mold or fixed formula for station operation." Id. The ultimate decision as to the presentation of programs was left to the licensee, who was expected, however, to make a positive effort to provide a schedule designed to serve the varied needs and interests of the people in his community.

13. The Supreme Court, in its landmark decision in "Red Lion Broadcasting Co. v. FCC," 395 U.S. 367 (1969), gave considerable support to the principle that the FCC could properly interest itself in program categories. In this decision, the Court specifically affirmed the Commission's fairness doctrine and noted that the doctrine (in addition to requiring a balance of opposing views) obligates the broadcaster to devote a "reasonable percentage" of broadcast time to the discussion of controversial issues of public importance. The Court made it plain that "the Commission is not powerless to insist that they give adequate . . . attention to public issues." Id. at 393.

14. While the holding of the Red Lion case was limited to the fairness doctrine, the Court's opinion has a significance which reaches far beyond the category of programming dealing with public issues. The Court resolved the First Amendment issue in broadcasting by stating that "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." Id. at 390. It stated further, that "[i]t is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by the Congress or by the FCC." Id. This language, in our judgment, clearly points to a wide range of programming responsibilities on the part of the broadcaster.

C. *Programs designed for children.* 15. One of the questions to be decided here is whether broadcasters have a special obligation to serve children. We believe that they clearly do have such a responsibility.

16. As we have long recognized, broadcasters have a duty to serve all substantial and important groups in their communities, and children obviously represent such a group. Further, because of their immaturity and their special needs, children require programming designed specifically for them. Accordingly, we expect television broadcasters as trustees of a valuable public resource, to develop and present programs which will serve the unique needs of the child audience.

17. As noted above, the Federal Radio Commission and the Federal Communications Commission have consistently maintained the position that broadcasters have a responsibility to provide a wide range of different types of programs to serve their communities. Children, like adults, have a variety of different needs and interests. Most children, however, lack the experience and intellectual sophistication to enjoy or benefit from much of the non-entertainment material broadcast for the general public. We believe, therefore, that the broadcaster's public service obligation includes a responsibility to provide diversified programming designed to meet the varied needs and interests of the child audience.

18. In this regard, educational or informational programming for children is of particular importance. It seems to us that the use of television to further the educational and cultural development of America's children bears a direct relationship to the licensee's obligation under the Communications Act to operate in the "public interest." Once these children reach the age of eighteen years they are expected to participate fully in the nation's democratic process, and, as one commentator has stated:

> Education, in all its phases, is the attempt to so inform and cultivate the mind and will of a citizen that he shall have the wisdom, the independence, and, therefore, the dignity of a governing citizen. Freedom of education is, thus, as we all recognize, a basic postulate in the planning of a free society. A. Meiklejohn, The First Amendment is an Absolute, in 1961 Supreme Court Review 245, 257 (Kurland ed.); see generally Brennan, The Supreme Court and the Meiklejohn Interpretation of the First Amendment, 79 Harv. L. Rev. 1 (1965).[4]

[4] In the words of the Supreme Court, "[a] democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies." Prince v. Massachusetts, 321 U.S. 158, 168 (1943).

We believe that the medium of television can do much to contribute to this educational effort.

Amount of programming for children. 19. While we are convinced that television must provide programs for children, and that a reasonable part of this programming should be educational in nature, we do not believe that it is necessary for the Commission to prescribe by rule the number of hours per week to be carried in each category. As noted above, we are involved in a sensitive First Amendment area, and we feel that it is wise to avoid detailed governmental supervision of programming whenever possible. Furthermore, while the amount of time devoted to a certain category of program service is an important indicator, we believe that this question can be handled appropriately on an ad hoc basis.[5] Rules would, in all probability, have been necessary had we decided to adopt ACT's proposal to ban advertising from children's programs. As explained below, however, we have not adopted that proposal and it may be expected that the commercial marketplace will continue to provide an incentive to carry these programs.

20. Even though we are not adopting rules specifying a set number of hours to be presented, we wish to emphasize that we do expect stations to make a meaningful effort in this area. During the course of this inquiry, we have found that a few stations present no programs at all for children. We trust that this Report will make it clear that such performance will not be acceptable for commercial television stations which are expected to provide diversified program service to their communities.

Educational and informational programming for children. 21. Our studies have indicated that, over the years, there have been considerable fluctuations in amount of educational and informational programming carried by broadcasters—and that the level has sometimes been so low as to demonstrate a lack of serious commitment to the responsibilities which stations have in this area.[7] Even today, many stations are doing less than they should.

22. We believe that, in the future, stations' license renewal applications should reflect a reasonable amount of programming which is designed to educate and inform—and not simply to entertain. This does not mean that stations must run hours of dull "classroom" instruction. There are many imaginative and

[5] We are just beginning to receive complete information on the children's programming performance of stations through question 6 in section 4–B of the new renewal form, FCC Form 303. It may be that the question of rules will be revisited as we gain experience under the new form. The Commission's Notice of Inquiry requested licensees to provide it with complete information on their program service to children on a voluntary basis; unfortunately, too few responded to provide a valid sample.

[7] In 1968 and 1969, for example, none of the networks carried a single informational program in its Saturday morning line-up of children's shows, and only one network presented an educational program during the week.

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exciting ways in which the medium can be used to further a child's understanding of a wide range of areas: History, science, literature, the environment, drama, music, fine arts, human relations, other cultures and languages, and basic skills such as reading and mathematics which are crucial to a child's development. Although children's entertainment programs may have some educational value (in a very broad sense of the term), we expect to see a reasonable amount of programming which is particularly designed with an educational goal in mind.[8]

23. We would like to make it clear, however, that we do not necessarily expect the broadcaster to have programs designed to cover every subject or field of interest. We simply expect the licensee to select the particular areas where he believes that he can make the best contribution to the educational and cultural development of the children in his community—and then to present programming designed to serve these needs. The Commission will, of course, defer to the reasonable, good faith judgments which licensees make in this area.[9]

Age-specific programming. 24. In its original petition, ACT requested the Commission to require broadcasters to present programming designed to meet the needs of three specific age groups: (1) Pre-school children, (2) primary school aged children, and (3) elementary school aged children. During the panel discussions before the Commission, however, ACT and several of the other parties agreed that the presentation of programming designed to meet the needs of just two groups, pre-school and school aged children, would be sufficient to meet the broadcaster's responsibilities to the child audience.

25. While we agree that a detailed breakdown of programming into three or more specific age groups is unnecessary, we do believe that some effort should be made for both pre-school and school aged children. Age-specificity is particularly important in the area of informational programming because pre-school children generally cannot read and otherwise differ markedly from older children in their level of intellectual development.[10] A recent schedule indicated that, although one network presented a commendable five hours a week for the pre-school audience, the others did not appear to present any programs for these younger children. In the future, however, we will expect all licensees to make a meaningful effort in this area.

Scheduling. 26. Evidence presented in this inquiry indicates that there is tendency on the part of many stations to confine all or most of their children's programming to Saturday and Sunday mornings. We recognize the fact that these are appropriate time periods for such shows, but are nevertheless concerned with the relative absence of children's programming on weekdays. It appears that this lack of weekday children's programs is a fairly recent development. In the early 1950's, the three networks broadcast twenty to thirty hours of children's programming during the week. During the late fifties and early sixties many popular shows such as "Howdy Doody", "Mickey Mouse Club" and "Kukla, Fran and Ollie" disappeared, and by the late sixties, "Captain Kangaroo" was the only weekday children's show regularly presented by a network. While some stations, particularly those not affiliated with networks, do provide weekday programming for children, there is nevertheless a great overall imbalance in scheduling.

27. It is clear that children do not limit their viewing in this manner. They form a substantial segment of the audience on weekday afternoons and early evenings as well as on weekends. In fact, the hours spent watching television on Saturday and Sunday constitute, on an average, only 10 percent of their total viewing time. (A.C. Nielsen Company, February, 1973). Accordingly, we do not believe that it is a reasonable scheduling practice to relegate all of the programming for this important audience to one or two days. Although we are not prepared to adopt a specific scheduling rule, we do expect to see considerable improvement in scheduling practices in the future.

III. *Advertising practices*—A. *Background.* 28. The second major area of concern in this inquiry has to do with advertising practices in programs designed for children. In its original petition, ACT requested that the Commission eliminate all commercials on programs designed for children and prohibit any other use or mention of any product by brand name. During the course of the proceeding various parties criticized the amount of commercial matter now directed toward children, the frequency of program interruptions and a variety of other specific advertising practices: these included the use of program talent to deliver commercials ("host selling") or comment on them ("lead-ins and/or outs"); the prominent display of brand name products on a show's set ("tie-ins"); the presentation of an unrealistic picture of the product being promoted; and the advertising generally of products which some parties consider harmful to children (e.g., snack foods, vitamins and drugs).

29. The Commission's statutory responsibilities include an obligation to insure that broadcasters do not engage in excessive or abusive advertising practices. The Federal Radio Commission warned in 1928 that "advertising must not be of a nature such as to destroy or harm the benefit to which the public is entitled from the proper use of broadcasting." 2 F.R.C. Ann. Rep. 20 (1928). In 1929 the FRC again considered the advertising problem in the context of the licensee's responsibility to broadcast in the public interest. Great Lakes Broadcasting Co., 3 F.R.C. Ann. Rep. 32 (1929). The Commission noted that broadcasters are licensed to serve the public and not the private or selfish interests of individuals or groups. It then stated that "[t]he only exception that can be made to this rule has to do with advertising; the exception, however, is only apparent because advertising furnishes the economic support for the service and thus makes it possible." *Id.* The FRC recognized "that, without advertising, broadcasting would not exist, and [that it] must confine itself to limiting this advertising in amount and in character so as to preserve the largest possible amount of service for the public." *Id.* at 35. The FCC, over the years, has maintained a similar position. See "The Blue Book," supra, 40–41; "Report and Statement of Policy Re: Programming," supra, at 1913.

30. Traditionally, however, the Commission has not attempted to exercise direct supervision over all types of advertising abuses. Since the Federal Trade Commission has far greater expertise in, and resources for, the regulation of false or deceptive advertising practices, the FCC has largely confined its role in this area to notifying stations that the broadcast of material found to be false or deceptive by the FTC will raise questions as to whether the station is operating in the public interest. See Public Notice entitled "Licensee Responsibility with Respect to the Broadcast of False, Misleading, and Deceptive Advertising, FCC 61–1316 (1961); "Consumers Association of District of Columbia," 32 FCC 2d 400 (1971). We do not believe that it would be appropriate to change this policy at the present time. The Federal Trade Commission is currently conducting inquiries into ad-

[8] As a general matter, programs of this type are logged as "Instructional" in accord with the provisions of Section 73.670 of the Commission's rules. The rule defines instructional programming so as to include "programs • • • involving the discussion of, or primarily designed to further an appreciation or understanding of, literature, music, fine arts, history, geography, and the natural and social sciences • • •" 47 CFR 73.760, Note 1(f). Typically, such programs as Captain Kangaroo, Multiplication Rock, and Wild Kingdom are logged as instructional.

[9] Another area of concern to many of the critics of children's programming in this proceeding was the emphasis on fantasy in the animated cartoons and in other "fanciful" programs which dominate the children's schedule. Such programming, it is argued, does not offer children the diversified view of the world of which television is capable. While the Commission recognizes that cartoons can do much to provide wholesome entertainment for young children, we note that the networks have broadened their schedules for this Fall to include more live-action shows and more representations of "real" people interacting with their families and the world around them. We commend the networks for being responsive to these concerns and for having made an effort to provide programming which meets the varied needs and interests of the child audience.

[10] With regard to entertainment programming, there is considerable evidence that pre-school children, unlike older children, cannot distinguish fantasy from reality. It does not follow, however, that because a program is not age-specific, it cannot provide wholesome entertainment for all ages. Therefore, while there may be some value in age-specific entertainment programming, we cannot say that this is necessary in every case.

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vertising practics on children's programs (F.T.C. File No. 7375150) and food advertising (F.T.C. File No. 7323054) which cover many of the advertising practices objected to by the parties before the Commission. In light of the actions of the FTC, we have chosen not to address some of these specific promotional practices. On the basis of this proceeding, however, we are persuaded that an examination of the broadcaster's responsibility to children is warranted in the areas of the overall level of commercialization and the need for maintaining a clear separation between programming and advertising.

B. *Overcommercialization.* 31. While it is recognized that advertising is the sole economic foundation of the American commercial broadcasting system and that continued service to the public depends on broadcasters' ability to maintain adequate revenues with which to finance programming, the Commission has a responsibility to insure that the "public interest" does not become subordinate to financial and commercial interests. Although this proceeding marks the first instance in which the level of advertising on programs designed for children has been singled out as possibly abusive, the Federal Government has been concerned about the problem of overcommercialization in general since the beginning of broadcast regulation. In 1929, the Federal Radio Commission took the position that the "amount and character of advertising must be rigidly confined within the limits consistent with the public service expected of the station." "Great Lakes Broadcasting Co.," 3 F.R.C. Ann. Rep. at 35 (1929). The Federal Communications Commission has continued this policy. In 1946, for example, the Commission noted that, "[a]s the broadcasting system itself has insisted, the public interest clearly requires that the amount of time devoted to advertising shall bear a reasonable relation to the amount of time devoted to programs." "The Blue Book, supra." 56. In the definitive 1960 policy statement, licensees were admonished to "avoid abuses with respect to the total amount of time devoted to advertising continuity as well as the frequency with which regular programs are interrupted for advertising messages." "Report and Statement of Policy Re: Programming, supra," at 1912–1913.

32. Although some of the parties to this proceeding questioned the Commission's authority to limit the level of commercialization on children's programs, the Commission believes that it has ample authority to act in this area. This issue was raised in conjunction with the Commission's general inquiry into overcommercialization in 1963–1964, when the Commission concluded that it could adopt rules prescribing the maximum amount of time a licensee may devote to advertising:

> Numerous sections of the act refer to the public interest, one element of which clearly is the appropriate division as between program material and advertising * * *. We conceive that our authority to deal with overcommercialization, by whatever reasonable and appropriate means is well established. Amendment of Part 3 of the Commission's Rules and Regulations with Respect to Advertising on Standard, FM, and Television Broadcast Stations, 36 FCC 45, 46 (1964).

If a licensee devoted an excessive amount of his broadcast time to advertising, the Commission could certainly consider that factor in deciding whether a renewal of the license would serve the "public interest". See WMOZ, 36 FCC 201 (1964); Gordon County Broadcasting Co., 24 P&F R.R. 315 (1962); Mississippi Arkansas Broadcasting Co., 22 P&F R.R. 305 (1961). If a given policy is an appropriate consideration in individual cases, then, as the Supreme Court has suggested, "there is no reason why [the policy] may not be stated in advance by the Commission in interpretative regulations defining the prohibited conduct with greater clarity." "Federal Communications Commission v. American Broadcasting Company," 347 U.S. 284, 289–290, note 7 (1954).

33. A restriction on the amount of time a broadcaster may devote to advertising does not constitute censorship or an abridgement of freedom of speech. The courts have traditionally held that commercial speech has little First Amendment protection. "Valentine v. Christensen," 316 U.S. 52 (1942); "Breard v. City of Alexandria," 341 U.S. 622 (1951). A Congressional ban on cigarette advertising on television was held not to violate the First Amendment, in part, because broadcasters "[had] lost no right to speak—they [had] only lost an ability to collect revenue from others for broadcasting their commercial messages." "Capital Broadcasting Co. v. Mitchell," 333 F. Supp. 582, 584 (1971); aff'd 405 U.S. 1000 (1972).

34. If our policy against overcommercialization is an important one, and we believe that it is, it is particularly important in programs designed for children. Broadcasters have a special responsibility to children. Many of the parties testified, and we agree, that particular care should be taken to insure that they are not exposed to an excessive amount of advertising. It is a matter of common understanding that, because of their youth and inexperience, children are far more trusting of and vulnerable to commercial "pitches" than adults. There is, in addition, evidence that very young children cannot distinguish conceptually between programming and advertising: they do not understand that the purpose of a commercial is to sell a product. See Report to the Surgeon General, "Television and Growing Up: The Impact of Televised Violence," Vol. IV at 469, 474 (1970). Since children watch television long before they can read, television provides advertisers access to a younger and more impressionable age group than can be reached through any other medium. See "Capital Broadcasting Co., supra," at 585–6. For these reasons, special safeguards may be required to insure that the advertising privilege is not abused. As the Supreme Court stated, "[i]t is the interest of youth itself, and of the whole community that children be . . . safeguarded from abuses." "Prince v. Massachusetts," 321, U.S. 158, 165 (1943).

35. Despite these concerns, we have chosen not to adopt ACT's proposal to eliminate all sponsorship on programs designed for children. The Commission believes that the question of abolishing advertising must be resolved by balancing the competing interests in light of the public interest.[11] Banning the sponsorship of programs designed for children could have a very damaging effect on the amount and quality of such programming. Advertising is the basis for the commercial broadcasting system, and revenues from the sale of commercial time provide the financing for program production. Eliminating the economic base and incentive for children's programs would inevitably result in some curtailment of broadcasters' efforts in this area. Moreover, it seems unrealistic, on the one hand, to expect licensees to improve significantly their program service to children and, on the other hand, to withdraw a major source of funding for this task.

36. Some suggestions were made during the proceeding that institutional advertising or underwriting would replace product advertising if the latter were prohibited. Although we would encourage broadcasters to explore alternative methods of financing, at this time there is little evidence that the millions of dollars necessary to produce children's programs would, in fact, be forthcoming from these sources. Since eliminating product advertising could have a serious impact on program service to children, we do not believe that the public interest would be served by adopting ACT's proposal.

37. The present proceeding has indicated, however, that there is a serious basis for concern about overcommercialization on programs designed for children. Since children are less able to understand and withstand advertising appeals than adults, broadcasters should take the special characteristics of the child audience into consideration when determining the appropriate level of advertising in programs designed for them. Many broadcasters substantially exceed the level of advertising that represents the best standard followed generally in the industry. The Television Code of the National Association of Broadcasters, for

[11] At one time the Commission maintained the position that "sustaining" programming (which was not commercially sponsored) played an important role in broadcasting. The Commission's 1949 policy statement placed considerable emphasis on sustaining programs to assure balanced programming and to serve minority tastes and interests. The Blue Book, supra, 12. In 1960, however, the Commission reversed its position on the grounds that "under modern conditions sponsorship fosters rather than diminishes the availability of important public affairs and 'cultural' broadcast programming." Report and Statement of Policy Re: Programming, supra, at 1914.

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example, permits only nine minutes and thirty seconds of non-program material (including commercials) in "prime-time" programming (i.e., 7:00–11:00). In contrast, many stations specify as much as sixteen minutes of commercial matter an hour for those time periods in which most children's programs are broadcast.

38. Although advertising should be adequate to insure that the station will have sufficient revenues with which to produce programming which will serve the children of its community meaningfully, the public interest does not protect advertising which is substantially in excess of that amount. These revenues, moreover, need not be derived solely from programs designed for children.

39. On the basis of this proceeding, the Commission believes that in many cases the current levels of advertising in programs designed for children are in excess of what is necessary for the industry to provide programming which serves the public interest. Recently, following extensive discussions with the Commission's Chairman, the National Association of Broadcasters agreed to amend its code to limit non-program material on children's programs to nine minutes and thirty seconds per hour on weekends and twelve minutes during the week by 1976; the Association of Independent Television Stations (INTV) has agreed to reduce advertising voluntarily to the same level. By these actions the industry has indicated that these are advertising levels which can be maintained while continuing to improve service to children.

40. The Commission's own economic studies support this assumption. The economic data indicates that there is an "inelasticity of demand" for advertising on children's programs. It appears, therefore, that the level of advertising on children's program can be reduced substantially without significantly affecting revenues because the price for the remaining time tends to increase. In 1972, for example, the NAB reduced the permissible amount of non-program material on weekend children's programs from 16 to 12 minutes per hour; although the amount of network advertising was cut by 22 percent, the networks' gross revenues for children's programs fell by only 3 percent. The Commission anticipates similar results if advertising were further limited to nine minutes per hour: There should be minimal financial hardship on networks and affiliates, although the problem could be somewhat more significant for independent stations. Most independent stations, however, have already agreed to make reductions, and the fact that 12 minutes per hour will still be permitted on weekdays (when most of these stations program for children) should soften any adverse economic effect.

41. The issue remains, however, whether the Commission should adopt per se rules limiting the amount of advertising on programs designed for children or await the results of the industry's attempt to regulate itself. The decisions of the NAB and the INTV to restrict advertising voluntarily are recent developments which occurred during the course of this inquiry and after consultation with the Commission's Chairman and staff. The Commission commends the industry for showing a willingness to regulate itself. Broadcasting which serves the public interest results from actions such as these which reflect a responsive and responsible attitude on the part of broadcasters toward their public service obligations.

42. In light of these actions, the Commission has chosen not to adopt per se rules limiting commercial matter on programs designed for children at this time. The standards adopted by the two associations are comparable to the standards which we would have considered adopting by rule in the absence of industry reform.[12] We are willing to postpone direct Commission action, therefore, until we have an opportunity to assess the effectiveness of these self-regulatory measures. The Commission will expect all licensees, however, to review their commercial practices in programs designed for children in light of the policies outlined by the Commission and the standards now agreed upon by substantial segments of the industry, and to limit advertising to children to the lowest level consistent with their programming responsibilities. If it should appear that self-regulation is not effective in reducing the level of advertising, then per se rules may be required.

43. To insure that the Commission will have adequate information on broadcasters' advertising practices in programs designed for children, we will, in a separate order, amend the renewal form to elicit more detailed information in this area. All licensees will be asked to indicate how many minutes of commercial matter they broadcast within an hour in programs designed for children both on weekends and during the week. The data provided by this question will serve, in part, as a basis for determining whether self-regulation can be effective. In addition, since the Commission's own economic studies and the actions of the industry indicate that nine minutes and thirty seconds on weekend children's programs and twelve minutes during the week are levels which are economically feasible for most licensees to achieve over the next year and a half, the broadcast of more than the amount of advertising proposed by the NAB and the INTV after January 1, 1976,[13] may raise a question as to whether the licensee is subordinating the interests of the child audience to his own financial interests.

44. For the present, compliance with the advertising restrictions adopted by the industry and endorsed by the Commission will be sufficient to resolve in favor of the station any questions as to whether its commercial practices serve the public interest. Licensees who exceed these levels, however, should be prepared to justify their advertising policy. We recognize that there may be some independent VHF and UHF stations which cannot easily afford such a reduction in advertising; such stations should be prepared to make a substantial and well-documented showing of serious potential harm to support their advertising practices. However, we anticipate accepting very few other justifications for overcommercialization in programs designed for children.

45. We emphasize that we will closely examine commercial activities in programs designed for children on a case-by-case basis. Overcommercialization by licensees in programs designed for young children will raise a question as to the adequacy of a broadcaster's overall performance. The Commission will, in addition, continually review broadcasters' performance on an industry-wide basis.[14]

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[12] The actual proposals of the two industry groups are as follows: (1) Beginning in January, 1975, the NAB Code will permit broadcasters 10 minutes of non-program material per hour on Saturday and Sunday children's programs and 14 minutes during the week; beginning in January, 1976, these levels will be further restricted to 9 minutes and thirty seconds on weekends and 12 minutes during the week; (2) beginning in January, 1975, the Association of Independent Television Stations will reduce its advertising to 12 minutes per hour on Saturday and Sunday and 14 minutes during the week; beginning in January, 1976, advertising will be limited to 9 minutes and thirty seconds on the weekend and 12 during the week.

The Commission is willing to accept the phased-in reduction proposed by the industry. Although the Commission's economic studies indicate that affiliates probably would not suffer significant economic hardship from an immediate reduction, non-affiliated broadcasters could be affected. The Commission's own economic analysis suggested a gradual implementation of the proposed reduction. Since the NAB members include non-affiliated stations, we believe that both the NAB and INTV proposals are reasonable.

The Commission, in addition, finds the proposed differentials between weekend and weekday programming to be acceptable. Unlike Saturday and Sunday morning when there is no significant audience other than children, weekday mornings and afternoons are attractive periods to program for adults. The more substantial the differential between the permissible level of advertising on children's and adult programs during the week, the greater is the disincentive to program for children on weekdays. Since we are already concerned about the concentration of children's programming on the weekend, we are willing to accept the balance which the industry has struck on this issue.

[13] Broadcasters who are not members of either the NAB or the INTV are, of course, not bound by their proposed phased-in reductions. As noted in the conclusion to this Report, however, the Commission expects all licensees to make a good faith effort to bring their advertising practices into conformance with the policies established herein over the period preceding January 1, 1976.

[14] We wish to stress that self-regulation can only be acceptable in this area if it is effective generally throughout the industry. As the Chairman has stated: "It is important that certain standards apply industry wide and not solely to those broadcasters who voluntarily live up to the highest principles of public service responsibility." Address before the National Academy of Television Arts and Sciences, Atlanta Chapter, Atlanta, Georgia, May 23, 1974.

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If self-regulation does not prove to be a successful device for regulating the industry as a whole, then further action may be required of the Commission to insure that licensees operate in a manner consistent with their public service obligations.

C. Separation of program matter and commercial matter. 46. The Commission is concerned, in addition, that many broadcasters do not presently maintain an adequate separation between programming and advertising on programs designed for children. The Commission has ample authority under the Communications Act to require broadcasters to maintain such a separation. Any practice which is unfair or deceptive when directed to children would clearly be inconsistent with a broadcaster's duty to operate in the "public interest" and may be prohibited by the Commission. Section 317 of the Communications Act, in addition, specifically requires that all advertisements indicate clearly that they are paid for and by whom. 47 U.S.C. 317. The rationale behind this provision is, in part, that an advertiser would have an unfair advantage over listeners if they could not differentiate between the program and the commercial message and were, therefore, unable to take its paid status into consideration in assessing the message. Hearings on H.R. 5589 before the "House Committee on the Merchant Marine and Fisheries," 69th Cong., 1st Sess., at p. 83 (1926). If inadequate separation contributes to an inability to differentiate programming from advertising, then Commission action designed to maintain a clear separation would further the policies of section 317.

47. On the basis of the information gathered in the course of the Commission's inquiry, it has become apparent that children, especially young children, have considerable difficulty distinguishing commercial matter from program matter. Many of the participants knowledgeable in the areas of child development and child psychology maintained that young children lack the necessary sophistication to appreciate the nature and purpose of advertising. Also, a study sponsored by the government concluded that children did not begin to understand that commercials were designed to sell products until starting grade school. Report to the Surgeon General, "Television and Growing Up: The Impact of Televised Violence," Vol: IV at 469 (1970). Kindergarteners, for example, did not understand the purpose of commercials; the only way they could distinguish programs from commercials was on the basis that commercials were shorter than programs. Id. at 469, 474. The Commission recognizes that, as many broadcasters noted, these findings are not conclusive; psychological and behavioral questions can seldom be resolved to the point of mathematical certainty. The evidence confirms, however, what our accumulated knowledge, experience and common sense tell us: That many children do not have the sophistication or experience needed to understand that advertising is not just another form of informational programming.

48. The Commission believes, therefore, that licensees, when assessing the adequacy of their commercial policies, must consider the fact that children—especially young children—have greater difficulty distinguishing programming from advertising than adults.[15] If advertisements are to be directed to children, then basic fairness requires that at least a clear separation be maintained between the program content and the commercial message so as to aid the child in developing an ability to distinguish between the two.

49. Special measures should, therefore, be taken by licensees to insure that an adequate separation is maintained on programs designed for children. One technique would be to broadcast an announcement to clarify when the program is being interrupted for commercial messages and when the program is resuming after the commercial "break."[16] Another would be to broadcast some form of visual segment before and after each commercial interruption which would contrast sufficiently with both the programming and advertising segments of the program so as to aid the young child in understanding that the commercials are different from the program. In this context, again following discussions with the Commission's Chairman and staff, the NAB Code Authority has recently amended its advertising rules to require a comparable separation device. We applaud this action by the industry to improve advertising practices directed to children.[17]

50. We recognize that this may be an incomplete solution to the problem. Indeed, in view of the lack of sophistication of the child audience, no complete solution may be possible. The broadcast of an announcement and/or a visual device can only aid children in identifying commercials. The Commission believes, however, that the licensee who directs advertising to children has a responsibility to take action to insure that it is presented in as fair a manner as possible.[18]

51. The Commission is also concerned that some broadcasters are now engaging in a commercial practice which takes unfair advantage of the difficulty children have distinguishing advertising from programming: the use of program characters to promote products ("host-selling"). In some programs designed for children, the program host actually delivers the commercial in his character role on the program set. In others, although the host does not actually deliver the commercial, he may comment on the advertisement in such a manner as to appear to endorse the product ("lead-in/lead-out").

52. The Commission does not believe that the use of a program host, or other program personality, to promote products in the program in which he appears is a practice which is consistent with licensees' obligation to operate in the public interest. One effect of "host-selling" is to interweave the program and the commercial, exacerbating the difficulty children have distinguishing between the two. In addition, the practice allows advertisers to take unfair advantage of the trust which children place in program characters. Even performers themselves recognize that, since a special relationship tends to develop between hosts and young children in the audience, commercial messages are likely to be viewed as advice from a friend.[19] The Commission believes that, in these situations, programming is being used to serve the financial interests of the station and the advertiser in a manner inconsistent with its primary function as a service to children. In this regard, it should be noted that many stations, in particular NAB Code member stations, have already eliminated host selling.[20]

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[15] Although the evidence indicates that this problem is most acute among pre-school children, they can be expected to make up a substantial portion of the audience of virtually all children's programming.

[16] The Commission notes in this context that similar practices are found in adult programs. Moderators on talk shows and announcers on sports programs often finish a program segment by announcing that the program will resume after the commercial break; sections of entertainment programs are sometimes entitled "Part I," "Part II," and so forth.

[17] The Commission notes in this context that while INTV does not have a code, it has established a committee to consider adopting general standards and guidelines on commercial practices in children's programs in addition to time limitations.

[18] In this connection, broadcasters may wish to consider a suggestion made by several of the parties that limiting the number of program interruptions by grouping commercials can contribute to maintaining a clear separation between programming and advertising. We do not believe that it is necessary at this time for the Commission to require "clustering" of commercials, although further consideration of this matter may be appropriate in the future. But, as we noted in the 1960 Programming Report, licensees should "avoid abuses with respect to . . . the frequency with which regular programs are interrupted for advertising messages." Report and Statement of Policy Re: Programming, supra, at 1912–1913. In this regard, particular care should be taken to avoid such abuses in programs designed for the pre-school audience.

[19] As a children's show hostess testified before the Commission: "I watched [a program host] sell Wonder bread for years. I bought Schwinn bicycles because I felt that they were a good thing and because I trusted him. The same thing applies to me in my neighborhood, in my town. I want the children to trust me. I want them to know that when I say something is good, to believe in me, the same way as if I suggested that they attend their school carnival or don't step off the curb when the bus is coming." Lorraine F. Lee-Benner, Transcript of the Panel Discussion, Vol. II, p. 339 (1972).

[20] Public interest questions may also be raised when program personalities or characters deliver commercial messages on programs other than the ones on which they appear. Although this practice would not have the effect of blurring the distinction between programming and advertising, some

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53. Finally, the Commission wishes to caution licensees against engaging in practices in the body of the program itself which promote products in such a way that they may constitute advertising.[21] The inquiry revealed that some broadcasters weave the prominent display of the brand names of products into the program sets and activities. One program's set, for example, featured a large billboard announcing the "[Brand Name] Candy Corner" under which children were regularly given samples of the brand name candy as prizes. The hostess on another program, before serving a snack to the children on the show, concluded a prayer with the words, "Now you may have your [Brand Name] orange juice from the [XYZ] Dairy." The analysis of the same program showed, in addition, that the children had been given "[the title of the show]" brand toys with which to play; these were carefully displayed to the viewing audience and children were encouraged to purchase these toys so that they could play along at home. One of the clearest examples of incorporating promotional matter into a program was a cartoon series entitled "Hot Wheels" which was the trade name of a toy manufacturer's miniature racing cars; the manufacturer developed an additional line of cars modeled after those featured in the cartoon series. The Commission found that the program itself promoted the use of the product and required the licensee to log more of the program as commercial matter. See Topper Corporation, 21 FCC 2d 148 (1969); American Broadcasting Companies, 23 FCC 2d 132 (1970).

54. Licensees should exercise care to insure that such practices are in compliance with the sponsorship identification requirements of section 317 of the Communications Act and the Commission's rules on logging commercial matter. Not every mention of a brand name or prominent display thereof necessarily constitutes advertising. All such material, however, should be strictly scrutinized by the broadcaster to determine whether or not it should be treated as commercial matter. See 47 U.S.C. 317(a); FCC Public Notice 63-409, entitled "Applicability of Sponsorship Identification Rules" (1963); 47 CFR 73. 670(a)(2), Note 3.

55. Licensees who engage in program practices which involve the mention or prominent display of brand names in children's programs, moreover, should reexamine such programming in light of their public service responsibilities to children. We believe that most young children do not understand that there is a "commercial" incentive for the use of these products and that it is, in fact, a form of merchandising. Any material which constitutes advertising should be confined to identifiable commercial segments which are set off in some clear manner from the entertainment portion of the program. When providing programming designed for children, the conscientious broadcaster should hold himself to the highest standard of responsible practices.

56. The Commission, thus, wishes to stress that this policy statement does not cover every potential abuse in current advertising practices directed to children. Licensees will be expected to reduce the current level of commercialization on programs designed for children, maintain an appropriate separation between programming and advertising, and eliminate practices which take advantage of the immaturity of children. The failure by the Commission to comment on any particular practice, however, does not constitute an endorsement of that practice. Many of these matters are currently under investigation at the Federal Trade Commission. Licensees are again reminded that the broadcast of any material or the use of any practice found to be false or misleading by the Federal Trade Commission will raise serious questions as to whether the station is operating in the public interest. Broadcasters have, in addition, an independent obligation to take all reasonable measures to eliminate false or misleading material. See Public Notice entitled "License Responsibility with Respect to the Broadcast of False, Misleading and Deceptive Advertising," supra. We will expect licensees to exercise great care in evaluating advertising in programs designed for children and refrain from broadcasting any matter which, when directed to children, would be inconsistent with their public service responsibilities.

IV. *Conclusion*. 57 It is believed that this Report will help to clarify the responsibilities of broadcasters with respect to programming and advertising designed for the child audience. We believe that in these areas every opportunity should be accorded to the broadcast industry to reform itself because self-regulation preserves flexibility and an opportunity for adjustment which is not possible with per se rules. In this respect, we recognize that many broadcasters may not currently be in compliance with the policies herein announced. Since this Report constitutes the first detailed examination of broadcasters' responsibilities to children, we do not wish to penalize the media for past practices. The purpose of this Report is to set out what will be expected from stations in the future.

58. We also realize that it will necessarily take some period of time for broadcasters, program producers, advertisers and the networks to make the anticipated changes.[22] Stations, therefore, will not be expected to come into full compliance with our policies in the areas of either advertising or programming until January 1, 1976. In the interim period, however, broadcasters should take immediate action in the direction of bringing their advertising and programming practices into conformance with their public service responsibilities as outlined in this Report.

59. In the final analysis, the medium of television cannot live up to its potential in serving America's children unless individual broadcasters are genuinely committed to that task, and are willing—to a considerable extent—to put profit in second place and the children in first. While Government reports and regulations can correct some of the more apparent abuses, they cannot create a sense of commitment to children where it does not already exist.

60. In view of the fact that we plan to evaluate the improvements in children's programming and advertising which are now expected, the proceedings in Docket No. 19142 will not be terminated at this time.

Adopted: October 24, 1974.

Released: October 31, 1974.

FEDERAL COMMUNICATIONS COMMISSION,[23]

[SEAL] VINCENT J. MULLINS,
Secretary.

APPENDIX A

SUMMARY OF COMMENTS DOCKET NO. 19142 CHILDREN'S TELEVISION PROCEEDING

1. Because of the volume of material which was filed in this proceeding a digest

advantage may be taken of the trust relationship which has been developed between the child and the performer. We recognize, however, that it may not be feasible, as a practical matter, for small stations with limited staffs to avoid using children's show personnel in commercial messages on other programs. While we are not prohibiting the use of selling by personalities on other programs, broadcasters should be cognizant of the special trust that a child may have for the performer and should exercise caution in the use of such selling techniques. This may be particularly important where the personality appears in a distinctive character costume or other efforts are made to emphasize his program role.

[21] ACT originally requested that we ban any mention of products by brand name during the body of a children's program. We are concerned, however, that such a ban would go so far as to prohibit even the critical mention of products and other comment for which no consideration is received. Such a rule would, we believe constitute a form of illegal censorship of programming. Cf., Capital Broadcasting Co. v. Mitchell, supra. Indeed, it would have a chilling effect on any effort to provide consumer education information for children.

[22] The Commission anticipates that the networks will take the lead in producing varied programming for children. The networks are responsible for the bulk of the programs now being broadcast: they provide most of the children's shows carried by network-owned or affiliated stations and originally produced most of the syndicated material presented by independent stations. Changes in network programming will, therefore, have both an immediat and a long-range impact as programs gradually become available on a syndicated basis. It is also clear that the networks have the financial resources to make a significant effort in this area. The Commission's economic studies indicate that network children's programming has been consistently profitable for many years.

[23] Commissioners Lee and Reid concurring in the result; Commissioner Hooks concurring and issuing a statement; Commissioner Washburn issuing additional views; Commissioner Robinson issuing a separate statement. Separate statements of Commissioners Hooks, Washburn and Robinson filed as part of the original document.

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of the pleadings and the issues raised in them on a party-by-party basis would be repetitious and confusing. Since the same point or opinion may have been expressed by as many as 100 parties in almost as many pleadings, little purpose would be served by specific identification of the sources of a particular view. For this reason, the discussion which follows proceeds on an issue oriented basis. The discussion will indicate, for example, that a point was made by a number of licensees, by independent UHF stations, etc., Specific attribution will be reserved for those situations where the views follow an independent path.

RESPONSE TO GENERAL QUESTIONS

2. *Question: What types of children's programs not now available do parties believe commercial TV stations should present?* For the most part, the licensees who answered this question indicated that they believed that virtually all types of programing for children was already offered. A few licensees expressed the view that more programing of a morally or spiritually uplifting quality could be offered and a few others expressed a preference for more programming dealing with real-life situations in an informative or educational approach. ACT, NCCB, and others of the opposite persuasion contended that current offerings were disproportionately weighted toward violent and stereotyped entertainment programs with little in the way of enlightened, informative and educational programing fare being offered. Similar expressions came from members of the public who decried the absence or paucity of quality programing for children, with the often noted exception of Sesame Street. Many were quite specific in their objections to particular programs, commercials or the methods followed in the area of children's television programing. The networks pointed to specific new programs to be presented beginning in the fall of 1971 as filling any gaps or inadequacies in their previous children's schedule.[1] The answers to this question dealt not so much with the total absence of a particular type or category of program[2] as with relative weight given to the categories in the mix offered or to the approach taken in regard to the formulation of entertainment programing.

3. *Question: To what extent, generally and with respect to particular programs and type of programs, does "children's programing" have benefits to children beyond the fact that it holds their interest and attention and thus removes the need for other activity or parental attention?* In actuality, two questions were posed: What value and importance is attached to the attention-holding function or attribute of the programing? and what benefits are there to the programing beyond its ability to occupy children's attention? On the one hand, a number of licensees asserted that as children are occupied watching television they do not require parental attention to keep them out of mischief, and parents freed of their need to pay close attention to their children were said to thus be able to devote themselves to household or other activities. A number of licensees asserted that this ability to hold the attention of children becomes particularly important when, for example, poor weather precludes outside play.

4. Most licensees, however, did not stress the importance of the attention-holding aspect of the programs but instead put their emphasis on the manifold benefits they believed were provided by the programs which are offered. Many licensees, in fact, criticized the notion that television should be used as a baby-sitter, especially when it is used as a means of avoiding parental responsibility.[3] What did not seem to be in dispute was the idea that children's programs did tend to hold a child's attention. ACT and others contended that the means of doing so were far from worthy and were utilized because of the need to attract the attention of children in the entire 2–12 age range in order to maximize the audience for the program. No one, of course, advocated dull or uninteresting programing which would not hold attention. Rather, the dispute centered on the means which legitimately could be used to garner the attention of a child.

5. By far the majority of comments, formal as well as informal, were in agreement about the significant contributions which television and specifically children's television could offer.[4] What they did not agree on was the degree to which current programing made such contributions. This difference often was reflected even in the evaluation of a particular program. ACT pointed up this distinction in one of its pleadings in which it contrasted a network's description of a program with its own description. Thus, CBS described a network children's program as a program which "deals with recognizable young human beings in basic situations rather than the way-out world of the traditional animated cartoon". According to ACT, the episode it monitored dealt with the capture of a frozen caveman who later chases the main character's friends, each trying to capture the other until the caveman falls into a giant clam tank and is discovered to be a professor intent on stealing another scientist's inventions.

6. A similar pattern could be found in the difference expressed regarding the general quality of children's programing and the benefits to be derived from this programing. Opponents of the ACT view pointed to the highly informed level of children of today (much of which they attributed to television) and contended that all of television viewing is informative, bridges gaps between individuals and groups, and broadens an awareness of the world at large and the functioning of our society. ACT and others of a similar persuasion accepted television's capacity but contended that it has been little used or that it teaches lessons in violence as a solution to human problems, presents false role models and takes advantage of children through advertising. While ACT did find merit in some of the program offerings, its view was that far too few programs reach the level television is capable of reaching.

7. *Question: What, generally speaking, is a definition of "children's programing" which could serve for the Commission's use in this connection? To what extent do children, particularly in the higher age groups mentioned by ACT, view and benefit from general TV programing?* As to the first part of the question, the answers fell into three basic categories: those who agreed with the definition offered in the Notice, those who wanted a broader definition and those who found the concept of children's programing to be beyond definition. The supporters of Commission regulatory action and some licensees as well agreed that the only sensible definition was one based on the audience for whom the program was primarily intended (usually with the qualifier that it be presented when children are likely to watch). Others found this too restricted and wanted a broader definition to include programs of broad family appeal which had a large audience of children; some would include any program watched by large numbers of children.[5] A large number of broadcasters simply felt no workable definition could be found. As they saw it, there were too many disparate elements to be taken into account, and as to these elements they were troubled about using a definition based either on subjective intent of the program producer or on the vagaries of scheduling or of the viewing habits of the child audience.

8. There was general agreement among the parties that children, particularly older ones, spend a substantial portion of their viewing time watching programs other than those produced specifically for children. They did not always agree, however, or how worthwhile this was, although there were a number of programs which met with acceptance by all or virtually all of the commenting parties, particularly those programs of an informative nature.[6] As to the re-run situation comedies which were broadcast during hours when many children were watching, the criticism was not so much directed to the programs themselves[7] as to the failure to offer programing specifically designed for children for viewing in these time periods. From the critics' point of view, these "family" programs did not provide the same benefits to children as programs created particularly for them would have, and it was the lack of such programs, especially during the week, which they decried.

9. *Question: What restriction on commercials short of prohibition—e.g., on types of programs or services, what can be said, number, divorcement from program content, etc.—would be desirable? Comments should take into account in this connection the provisions of the NAB Television Code and its guidelines.* In fact, this question consists of a series of sub-questions, and the commenting parties took varying positions on them. On only one point was there general agreement, viz, that advertising for at least certain adult products or services was inappropriate in or adjacent to children's programing. While not all parties were in agreement about the specific commercials which would fit in this category, they accepted the notion that otherwise legitimate advertising matter migh be unsuitable for children, *e.g.*, excerpts from a movie to which children would not be admitted unless accompanied by an adult. One comment was directed to public service announcements and made the point that a number of them dealt with subject matter or used methods of presentation which could be frightening to children. They urged

[1] It should be pointed out that this information is in part dated.

[2] The only exception was the objection, voiced in a small portion of the letters, to the absence of religious programing devised for and specifically directed to children on any station in several of the markets.

[3] What is meant here is the possible misuses of television as a substitute for parental involvement and concern. This is separate from the dispute regarding the nature of licensee responsibility in the area of program selection and presentation as contrasted with parental responsibility to screen programs.

[4] There were differences in the stress put on television watching as distinguished from other child activities and greater or lesser concern expressed about a balance between passive, individual, activities like television watching as distinguished from other activities of an active, social nature.

[5] The tendency of children to watch family and adult shows starting at rather early ages was frequently mentioned in the comments. Some attributed this to viewing habits. Others to the desire of children to emulate adult viewing habits.

[6] Similar support was expressed for prime-time children-oriented specials.

[7] In point of fact, ACT and others directed their strongest criticism to the children's programs presented on Saturday morning finding them more objectionable, violent, stereotyped and ad-ridden than family programs by far.

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greater care in screening not just the merit of the announcement's goals but the suitability of the approach as well. More generally, objections were made to the advertising for certain products on the basis that these commercials for these products encouraged children along paths detrimental to their health or well being.

10. Frequent concern was expressed about vitamins and snack-foods—both considered as food advertising by the industry. Dr. Mary C. McLaughlin, Commissioner of Health for New York City, decried the worsening eating habits of New York City (and American) children, manifested in their reduced consumption of fruits and vegetables and their increased consumption of high calorie snack foods having little nutritive value. According to Dr. McLaughlin, television advertising, especially to children, has fostered the emphasis on snack foods, a trend which results in poor nutrition and high incidence of obesity. She urged adoption of the code of foodstuff advertising developed by Dr. Choate which would require disclosure of a product's nutritive value and calorie content in all television advertising for the product.

11. A number of people were greatly concerned about vitamin advertising. They objected to the failure to provide warnings about the danger of possible overdoses, and to the suggestion they said was implicit in these advertisements, that vitamins were a substitute for proper attention to eating a well balanced diet. Many of those writing charged that vitamin and other such advertising was fostering if not creating a drug dependent generation. They particularly despised the notion that people should be encouraged to believe that they only have to take a pill to solve their problems. Action to restrict or ban such ads was urged by these critics. Those opposing restricting such advertising pointed to the legality of the products and insisted that many items in the home were unsafe in the hands of a child. Thus, the answer was said to be proper parental control of the situation and the exercise of proper precautions to keep these products away from children.

12. A large portion of the people who objected to all advertising to children said that, at a minimum, the Commission ought to act to require a reduction in the amount of commercial time and the number of interruptions of program continuity. There was another but much smaller group, that concentrated their fire on the intrusiveness of the commercials rather than on commercialization as such, and they echoed the often expressed desire to treat children's programming on Saturday morning the same way as adult prime time is treated in terms of limits on the amount of non-program material and the number of permissible interruptions. A number of licensees disagreed, finding nothing unfair to children or contrary to the public interest in the use of a standard which applied to all non-prime time programing whether for adults or children. None of the licensees thought this to be a suitable area for Commission action.

13. On the question of divorcement of commercials from program content, industry reaction was divided. Some contended that the various commercial approaches that blended program and commercial were entirely legitimate and did not take advantage of the child. In their view, delivery of a commercial by a program host or other program talent was a long used legitimate method of advertising, not something developed to take advantage of children. A few licensees took the position that switching back and forth between program and commercial could be disruptive to a child's viewing and thus there would be a benefit to a lead-in or lead-out provided by program talent or the delivery of a commercial by them. Opponents of this group of commercial practices argued that children cannot separate the commercials from the program under such circumstances and that this situation takes unfair advantage of the special trust children have in the characters (live or cartoon) on the programs. It does this, they charged, because children believe that the commercial advice given them, particularly by program hosts, is given on a disinterested basis to promote their welfare, and they do not know or cannot understand the nature of a situation in which the people are paid to deliver commercial copy. Various other, tie-in, practices came in for criticism, and some programs were attacked as being a show case for tied-in products.

14. NAB Code supporters talked of its value in terms of self-regulation and the exercise of licensee responsibility and its ability to change to reflect changed circumstances or demonstrated need. Opponents questioned its capacity to deal effectively with these matters.

15. *Question: To what extent should any restriction on commercial messages in children's programs also apply to such messages adjacent to children's programs?* Most of the parties commenting agreed that commercials adjacent to a children's program should be treated on the same basis as are commercials actually within the program. Sometimes, however, material presented in adjacency positions did cause objections to be voiced, as when promos were presented for nighttime programs which were intended for a more mature audience or when non-children's movies were advertised. Most of these people did not object to the nature of the adult programs or movies as such or even necessarily to commercials on behalf of them. Rather, they objected to placing them in a time slot in which many children would have occasion to view material they considered inappropriate because it contained scenes of violence or had obvious sexual overtones.

CURRENT STATE OF CHILDREN'S PROGRAMMING

16. The three commercial television networks offer a large block of Saturday morning and early afternoon programing directed at children and a lesser amount of such programing is offered on Sunday. Currently, CBS is the only network that presents a weekly program for children, Captain Kangaroo, presented for an hour each day, Monday through Friday. ACT criticized the paucity of children's programing during weekdays and the total absence of network children's programing during weekday afternoons. Although there is no current network offering directed towards children that is presented by the three networks during these hours, such was not always the case. In fact, weekday programing used to constitute the major part of the children's schedule. According to ACT, children's programing offered by New York City network affiliates was as follows:

	Hours and minutes		
	Weekdays	Saturdays	Sundays
1948 to 1949	20:00	None	5:25
1951 to 1952	27:45	10:00	9:45
1954 to 1955	32:45	18:00	8:30
1957 to 1958	19:15	9:15	11:00
1960 to 1961	17:15	15:00	6:45
1963 to 1964	11:00	15:00	6:15
1966 to 1967	12:30	19:00	6:45
1969 to 1970	5:00	17:00	5:45

17. On weekdays, during the hours mentioned by ACT, independent stations, particularly UHF stations, do offer programing directed at children. Most of this programing appears to be from syndication rather than local sources and it includes a significant amount of material that had been presented by the networks previously.[8] Some of the material comes from other sources and movie cartoons and shorts are often a major part of local shows. Few shows are truly local in character. By far the most frequently encountered local show (although the format is not locally derived) is "Romper Room."

18. *Networks.* The majority of network programs were animated cartoons and entertainment continued as the principal focus. In describing their own programs, licensees used such terms as informative, enjoyable, fanciful, diverting and certainly harmless. The critics charged that these programs were vacuous, trite, mechanical, violent, stereotyped and harmful to the spirit of the child.

19. On weekdays, except for Captain Kangaroo, children must turn elsewhere than the networks for programs specifically designed for them, or they can and do watch programs not specifically designed for them.[9] The afternoon hours after school-age children have returned from school are ones which network affiliates fill with non-network programing, usually family shows or movies. The networks do offer a considerable number of hours of programing at other times during the day, mostly in two categories: game shows and soap opera. Throughout the day, independent stations are more likely to offer programs produced for children, usually obtained from syndication.

20. *Syndication.* Syndicators provide programing that forms the bulk of the schedule on most independent stations. To a lessor extent network affiliates rely on this source as well. Although some of this programing is specifically for children, more of it is family fare and some was thought not to be appropriate for a child audience at all. Although data submitted in this proceeding is not directed specifically to this point, it does appear that there are two major categories of programs produced for children. One is the motion picture material consisting of cartoons and such programs as "Little Rascals"; the other is off-network re-runs. There appears to be little in the way of domestic sources for original non-network programing specifically for children.

21. *Local originations.* The vast majority of programing directed to children does not originate locally. Even these local shows that are presented often include syndicated (usually cartoon) material and this often constitutes the bulk of the program material on the show. One notable exception is "Romper Room", which while it is locally produced, follows certain guidelines set by the show's originators.

22. Generally speaking, the parties commented on the high cost of locally produced programing and none of them made the presentation of local programing a must. The parties urging change argued in favor of more programs specifically designed for children—programs of high quality, informative and humane—but their concern was with what is presented rather than its source. Stations broadcasting them, however, spoke of them with particular pride.

THE NATURE AND PURPOSES OF CHILDREN'S PROGRAMING

23. *Defining children's programing.* One group, consisting of ACT and a number of licensees; defined children's programing as

[8] It has been alleged that the programs which the networks removed from their schedules because of a concern about their excessive violence are now frequently seen in syndication. No figures are available on this.

[9] This discussion is restricted to commercial television. Where available, children can also select public television programs like Sesame Street, Misteroger's Neighborhood, The Electric Company, and others.

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programs designed for children presented at times when they can watch. A sizeable group (mostly broadcasters) either rejected the notion that a suitable definition is possible, in light of the varied viewing habits of children, or insisted on a definition that included programs other than those specifically intended for children. What they had in mind are family shows, typically situation comedies, that were thought to appeal to children. Many children do watch these programs and sometimes form a majority of the program's viewers.

24. Although ACT and the others acknowledged the fact that children watch many programs created for family audiences or for adults, they attributed much of this to the absence during many of the hours children are likely to be watching television of programing created especially for children. They did not deny the appeal that these programs have for children but they attributed much to the lack of choice of other, more suitable programing. The concern they expressed was two-fold: not enough child-oriented programing is being offered and the schedule of what is being offered is so weighted against weekday viewing that the child is left little or no choice but to watch a program which was not designed for him. Although they recognized that independent stations did offer children's programing during at least some of these hours, they strongly objected to these programs on the same basis as they did most of those in the weekend network schedule.

25. On the other side, licensee comments stressed the significant contributions they felt the stations were making in their programing for children and the persence of children's programs in the weekday schedule of many stations. They contended that family programs which are scheduled during weekday hours do have value for children. In their view, children as they grow older mature in their programing tastes and even in early years demonstrate a desire to imitate adult behavior, including their viewing habits. Thus, they concluded that these programs are responsive to children's needs and desires, which should not be so narrowly defined as to include only programs created specifically for children.

26. *Age specificity.* One of the principal objections raised by opponents of current programing practices was the lack of age specificity. They charged most stations with ignoring the notable differences between children of various ages. In their view, programs that appeal to a wide range of ages necessarily fall short in satisfying the needs of children. They insisted that this is the unavoidable product of the need to adopt an approach that will capture the entire age range of children from 2 to 12.[*] Programing of real substance, they asserted, cannot appeal to all ages, and since the stations are not willing to lose part of their audience, they seek the lowest common denominator in order to attract them all. In particular, they charged that this is done by the practice of exploiting activity and violence (in its many forms) to capture the interest of this diverse group.

27. So long, the critics continued, as the programing must collect a large audience that includes the entire range of ages from 2–12 in order to be attractive to advertisers and hence produce high revenues, programs will continue to be based on a lowest common demoninator approach. Only, they insisted, by ridding the programs of advertising pressures can improvements be made. In their view, it is the artificial constraint of seeking to capture all ages in order to meet the needs of advertisers rather than viewers that prevents the considerable programing talents in the field from being used humanely and effectively.

28. Broadcasters and others who took the opposite view held that stations could and did present entertaining and enjoyable programs for children. No purpose, they believed, would be served by a requirement that programs be age-specific with the inevitable result of excluding a large portion of the child audience. These licensees pointed to programs which they stated were selective in age level, but disputed the idea that those which are not could be faulted on that account. Overall, they insisted that legitimate criticisms have been met, programs have been improved, so that there is no need to follow the drastic approach urged by ACT. They labeled ACT's approach exclusionary and charged that it runs counter to the broad appeal that they believe has enabled American television to bring so much to so many. Moreover, they feared that the economic consequences of an exclusionary approach would be disastrous. Nor, financial questions aside, did they accept the notion that this approach would be feasible. Because children differ so markedly in so many respects, they insisted that there forever would be disputes about the proper categorization of programs. They foresaw the Commission as the arbiter of such disputes, placing it in the position (an unconstitutional one they insisted) of overseeing day-to-day programing decisions. These licensees asserted that whatever problems there might be in distinguishing children's television from non-children's would be multiplied if such sub-categories were created. In their view, the entire concept and the premises on which it rests were faulty and unworkable.

29. *What types of programs, to what purpose.* Another important point of contention between the parties was the matter of the types of programs that should be offered and the extent to which they are in fact presented. The broadcasters contended that programs of wide range and approach, entertaining and informative, are presented; and while in an important area like this one, no one can be satisfied with the status quo, the industry could take real pride in its accomplishments and point with satisfaction to important recent improvement. Particularly in regard to recent improvements, the networks went on at great length about new programs that had been or shortly would be in their schedules.

30. Although broadcasters were unwilling to accept ACT's view that informative as distinguished from entertainment programing should predominate, they believed that a good portion of their current programing was, in fact, informative or even educational. As they saw matters, such a distinction was more apparent than real, for they considered virtually all television programing to be informative and horizon broadening. They pointed with pride to the informed child of today as in good measure a product of television contribution to the dissemination of information.

31. Children, too, broadcasters insisted, were entitled to a chance to escape the rigors of their lives—the stresses of school, the strictures of growing up—and should not be deprived of an opportunity to simply enjoy a program for its sheer entertainment value. Their comments took the view that children need time for fun, including watching entertainment programs. This, they pointed out, should not be to the exclusion of other more serious fare on television or of other, non-television, activity.

32. ACT and the other parties sharing its views, took an entirely different position regarding the entertainment and informational qualities of children's television. They accepted the idea that purely entertainment programing does have a place, but they strongly objected to what they saw as a serious imbalance in favor of the entertaining, to the detriment of the informative. While they agreed that all programs inform in the sense that they convey information, they were greatly distressed about what is conveyed. In their view, much of it they saw as fostering stereotypes, prejudices and questionable social standards. They saw no inherent reason why programs could not be informative as well as entertaining, but they found little in the way of current programing that creatively responds to these twin goals.

33. *Licensee and parental responsibilities.* Essentially all agreed that broadcasters were not absolved of responsibility for what is broadcast merely because parents are responsible for their children. The Code and other industry statements of positions have pointed to the responsibility of the broadcaster to the youthful segment of his audience and the need for special care and concern in this area of programing. Broadcasters asserted similar views in the various individual submissions.

34. Broadcasters did contend, however, that they could not warrant that every program is suitable for viewing by every child. They asserted that only parents are in a position to recognize the unique character, personality and needs of each individual child. Thus, programs of real merit (or which in any event lack objectionable qualities for the typical child) might not be appropriate for viewing by a particular child in a given situation. More generally, they charged parents with the responsibility for making sure children did not abuse television. As to the programs themselves, broadcasters spoke with pride about current offerings (in both amount and quality) and were particularly proud of recent improvements. They did not agree with the critics' charges regarding violence, frenetic pace, unreality, commercial exploitation, stereotyped presentations and the like. Instead they saw a balance, a giving of attention to the real world and to subjects of genuine concern to children's lives, as well as to fantasy and fun.

35. The critics view was a very different one. They insisted that if the broadcasters truly wanted to follow an approach based on a genuine concern for children, the present situation could not possibly exist. They called for basic changes and as a result did not attach the same importance as broadcasters did to recent changes in the field. Nor did they have much faith in self-regulation. According to their appraisal of the situation, when "the pressure is on" changes for the better will occur, but unless the Commission acts to adopt effective requirements, matters will return to where they had been before. These parties insist that this has been the past experience with self-regulation, and they see no basis for expecting a different result on this occasion.

36. While ACT and the others acknowledged the responsibility that parents have, they asked just how much supervision can legitimately be required or expected of parents. They acknowledged the fact that some parents are not sufficiently concerned with the needs of their children and agreed that this was reflected in a failure to adequately screen the programs to be watched by their children. Although concurring with the broadcasters' view that this situation should not exist, they insisted that, so long as it does, it must be recognized by broadcasters. However, this was not the principal basis for their insistence on more responsible action by the broadcaster to protect the child audi-

[*] This is the age group discussed in the ACT petition and implicitly followed in the Notice, and it roughly agrees with industry practice, particularly as to the cutoff age of 12.

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ence. That insistence was premised on the view that parents, no matter how attentive, sincere or knowledgeable, are not in a position to really exercise effective control. The critics asserted that in order for parents to exercise this control, it would be necessary for them to be present at all times when the child is watching television and it would require them to make instant decisions on the acceptability of material. As ACT explained it, if they could agree that the problems which arise in this area pertain only to a few children or only to unusual circumstances, they would be more accepting of the arguments presented by the broadcasters. Their point, however, was that the problem is not limited to isolated presentations that may be troublesome to a few children. The essence of their objection was that the major part of children's programing is not only devoid of merit, it is actually harmful. Commercials, too, came in for heavy criticism, and here again, it is what they saw as the premise for such advertising—using children to sell products—that offended them, not a rare example of excess. In the view of those parents who have written to the Commission, there is no effective means open to the individual household to ameliorate the problem. The only possible answer they saw, namely turning off the television set entirely, raised separate problems and to them pointed to the great failure of American broadcasting to meet the needs of children. ACT and others likened the problem to that posed by an "attractive nuisance". Just as society holds a property owner having an attractive nuisance responsible for injuries to a trespassing child, so should it act in relation to current broadcasting fare. The core of the attractive nuisance doctrine is that, lacking mature judgment, children may be attracted to dangerous situations and protective measures therefore are necessary to avoid liability. They were no more persuaded about absolving broadcasters regarding their programing than the courts have been in absolving property owners. In both cases they wished the responsibility to be placed on the persons having effective control, in this case, the broadcaster. According to ACT, broadcasters appeal to children by use of unfair mechanisms and the resulting interest children show in television fare, however authentic, is no answer; in fact, it is part of the problem. Since, in the critics' view, children cannot be the judge of what is best for them and parental control cannot be effective when the problem is pervasive, the only answer they saw was a basic change in the nature of the programs that are presented.

37. Some suggested that one of the means for improving children's television is the utilization of experts in the field of childhood development. Few of the critical comments and fewer still of the comments from broadcasters dealt with this subject to any significant degree. Generally, those favoring such an approach believed that the two groups of experts involved—the broadcasters and those knowledgeable about children—should join forces so that each could contribute to the creation of more skillful, beneficial and constructive television fare for children. Some would have the Commission adopt rules to require all broadcasters to form a group of experts on which it could rely for guidance; others would merely encourage it. None of the parties expressing this view denied the expertise of the broadcaster in connection with adult programing. Nor did they challenge the workability of the current method of program selection for adults. Thus, while critics may bemoan the lack of a particular type of adult fare, they accepted the fact that adults are proper judges of what appeals to them and agree that current fare does have this appeal. With children, however, they argued that this test is faulty because children do not have the requisite maturity to make the necessary judgments on which such a process depends. Rather, they contended, children are open to exploitation by use of highly popular, but nonetheless objectionable attention gathering techniques. Thus, in effect, they argued that since children cannot make a judgment in the same way as an adult can, the popularity of a television program with children indicates nothing about its acceptability, much less its worth.

38. To remedy this situation several parties believed that childhood experts should be utilized to evaluate the impact of programing on the child audience. Not only did the proponents of this approach believe that it would avoid material of possible harm to children, but felt that it could lead to a fuller use of the great potential of television for reaching and informing children about themselves and the world in which they exist.

39. To some rather limited degree such experts are already being consulted by broadcasters. Although the broadcasters' comments did not deal extensively with this topic, it appeared that except possibly for the networks, matters have not developed to the point where there is a continuing dialogue and certainly not a partnership of effort.

COMMERCIALIZATION IN CHILDREN'S TELEVISION

40. *Generally.* As matters now stand, broadcasters depend on commercial advertising for support of children's television in much the same manner as they do for adult television. Broadcasters defended this approach as the only workable one, as subject to adequate safeguards and consistent with the profit motive implicit in the American system of broadcasting. The critics argued that this dependence on advertiser support forces children's programing to be directed to the lowest common denominator and charged that the commercials themselves exploit children by taking advantage of their immaturity. ACT would have the Commission bar commercials in children's television (or at least product commercials) and others (believing that complete abolition is not likely to occur) seek a reduction in the number of commercials and commercial interruptions and a restriction on what products can be advertised and what techniques can be employed. Broadcasters did not accept the idea that commercials exploit children or that any public benefit could possibly result from barring commercials. All they foresaw under such circumstances would be a decline in program quantity and quality. They rejected the argument that children are singled out for more commercialization, stating that all programing in non-prime time slots is governed by the same code standard regarding amount of commercialization.[11] Likewise they rejected the various charges regarding deleterious effects said to result from current commercials or current commercial practices.

41. *The relationship between programs and commercials.* Disagreeing with much that was advanced in the critical comments, the broadcasters concentrated on the economic consequences of a ban on advertising in children's programing. As they saw it, the consequences would be severe for all and catastrophic for some. They argued that children's programs, especially of the kind ACT favors, are expensive to produce; a requirement that they broadcast a minimum of 14 hours per week would increase their costs greatly, without providing an opportunity to even recoup these costs, much less make a profit. Even if they accepted the proposition that stations could absorb these costs (which they do not accept), they labeled such an approach unfair and contrary to the purposes of commercial broadcasting. In their view, ACT's proposal was based on incorrect allegations regarding high profits in the industry, when in fact, the statistics show that a sizeable number of stations operate at a loss or make only minimal profits. They asserted that for many stations the loss of revenue from children's programing could have very serious adverse consequences. In their view, the loss of these services would strike especially hard at independent UHF stations, whose success (or at least survival) is based on counter programing. This was the case, they asserted because these stations sought to serve segments of the audience rather than competing for mass appeal. They contended that children's programing is an important part of their counter programing, with a number offering more than 14 hours per week. Thus, they asserted, the losses would fall heaviest on stations doing the most and who would be least able to bear the burden. Moreover, they argued, these very stations make a great contribution to program diversity and the public would pay a great price for following the ACT approach since it could only lead to the virtually certain demise of many of these stations. Moreover, they charged that it would clearly be contrary to the Commission's policy to foster UHF growth and more importantly would be contrary to the overall public interest.

42. ACT, et al. disagreed. They insisted that the financial problems created by a loss of children's program advertising would have a serious effect on only a relatively few stations. In ACT's view, the proper way to deal with financial hardship is through the mechanism of granting exceptions or waivers. ACT asserted that this has been the usual Commission approach, as for example, when the Comimssion acted to curtail AM–FM duplication in the larger markets and many stations were able to obtain waivers. As to the majority of stations, ACT asserted that extraordinary profit levels do obtain in the industry and that their current revenues were not a fair guide because of the effects of the current economic downturn and the need to find substitutes for cigarette advertising. As the economy improved, they fully expected stations to return to their previous high profit position.

43. Moreover, according to ACT, alternative revenue sources would be available but would never be tapped so long as the existing situation was allowed to continue. First of all, they insisted that considerable revenue could be derived from institutional (non-product) advertising. This is not to say, they pointed out, that advertisers would necessarily prefer such an approach, only that they would follow it if that were the only method open to them. They also believed that underwriting represented another important source of funding, but they did not feel any real effort has yet been made to develop this either.

44. As to the latter point, underwriting, concern was expressed by educational broadcasters who feared that their funding from such sources could be seriously diluted, and by commercial broadcasters who doubted its workability and opposed it philosophically, as contrary to the American system of commercial broadcasting.

45. Broadcasters insisted that the advertiser-supported posture of children's television was a healthy and productive one that has enabled networks and individual stations to produce and present high quality programs to wide audiences throughout the

[11] Effective January 1, 1973, the NAB Code required reduced amounts of commercialization in week-end programs for children and barred use of program hosts or primary cartoon characters in commercials or in adjacent to children's programs.

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country. Not only did they fear the direct consequences of the revenues which would be lost, but they also were concerned about an exodus of talented and creative people to what they contend would be more remunerative activities. In sum, they felt confident that the results could only be fewer children's programs, or ones of lesser quality, or both.

46. According to ACT, if advertising-oriented decisionmaking were changed to a child-oriented approach, stations would be able to produce programs of real worth as well as interest, gearing them to particular age groups. Without such age-specificity, they believe that a good part of the benefit which otherwise could come from programs tailored for their particular audiences would be lost. Broadcasters, on the other hand, attack age-specificity as unworkable and exclusionary. They do not believe that programs of such narrow appeal form a sensible basis for children's or any other programming. They also deny that sponsorship or the lack of it is a determining factor and contend that a number of programs have been presented even though advertising support was lacking. What they do not accept is the view that the commercialization as such is wrong or harmful; rather they see it and the profit motive as commendable and part of the important underpinnings of the creative force behind our broadcasting system's achievements.

47. *Commercials: their content, effect and implications.* Two very different views were expressed regarding the impact of the commercials themselves and the legitimacy of directing them to children. On the one hand, ACT, the other organizations and many critics, decried such advertising as unfair. This criticism focused on two aspects of the impact of commercials: first, the effect on the child viewer, and second, the effect on the family. The critics assert that commercials directed to children do not present a fair or realistic picture of the commercial product being advertised. Rather, they charged, the commercials employ skillful techniques to take advantage of a child's vulnerability, trust and lack of maturity.

48. Specifically, the critics charged that notwithstanding self-regulatory efforts, commercials rely on unfair methods, such as the specific directive (* * * get it * * * now!), that have a great effect on children of an age when they seek to follow directions that are given them. The critics cited other approaches geared to particular age groups, to which they also objected including the use of sexually-oriented themes in doll commercials and a reliance on the child's fears of social isolation. Toy advertising came in for criticism for presenting ads that used gimmicks to mislead the child about the item, thus leading to disappointment. These statements were echoed in thousands of the letters filed in this proceeding. Unlike adult advertising where such a result could lead to disaster for the company involved, the critics contended that children's immaturity and the succession of new toys each season meant that children will continue to be susceptible to these techniques until eventually their trust is turned into cynicism by these repeated disappointments. These parties feared that children will become cynical and distrustful of all in the society, and it was this they viewed as a real danger to society. Some of these people pointed to disruptive activities by some young people today as manifesting this very problem.

49. Broadcasters disputed these assertions and argued that special standards have been employed to insure basic honesty and fairness in toy as well as other advertising. While agreeing that the purpose of advertising is to persuade, they insisted that this does not constitute an abuse. They pointed to Code provisions established to avoid deception and gave examples of advertising that was rejected as not being supported by actual experience with the product. Rather than being deceptive or unfair, they saw advertising as informative. Through such advertising children were said to learn about the working of the free enterprise system and about products of interest to them.

50. It is just the matter of consumer decision making that comes in for much criticism from ACT et al. They questioned whether products should be advertised to non-consumers, especially when they lack the necessary maturity and judgment to make a decision and the parents lack the informational impute. Moreover, they charged that the demand created by these advertisements drives a wedge between parent and child, putting parents under unceasing pressure to buy the advertised products.

51. Broadcasters did not accept the idea that television commercials are responsible for creating this situation. They argued that if television commercials were ended, the child would continue to have commercial pressures from other sources and would continue to see items of interest and demand them of his parents. The problem that results they saw as a function of the unwillingness of parents to say no or at least their difficulty in saying no.

52. The parties gave considerable attention to the question of a child's ability to separate the program from the advertising material in it or adjacent to it. In addition to the general observations by the parties on this point, they offered specific comments on practices which some saw as having a particular effect on the child's ability to distinguish the two.

53. On the one hand, critics argued that the impact of advertising in children's programs is exaggerated by virtue of the fact that young children are unable to make a distinction between programs and the interspersed commercials. They contended that this situation in and of itself takes advantage of young children, particularly since at that age they are unable to grasp the concept of advertising or the purpose of commercials. Moreover, charged the critics, various techniques were employed to blur the distinction between program and commercial thus exacerbating this problem.

54. Broadcasters generally took the opposite view, namely that a child, even at an early age, can distinguish between the program and the sponsoring commercial, and that the various techniques mentioned by the critics do not preclude the drawing of the distinction. A few broadcasters took the view that it is harmful to draw a sharp line of demarcation. In fact, they insisted that switching from program to commercial and back again can be disruptive to young children; they argued that it is more comfortable as well as enjoyable for them if the transition is blurred by the various techniques that can be used, particularly those involving use of the program host.[19]

55. The techniques of having program talent (real or cartoon characters) deliver commercials, the use of a lead-in/out by a program host and tie-ins were the major ones which have come in for scrutiny in the comments. Use of program talent was considered by the critics to have a telling effect in confusing the dividing line between program and commercial, with the result that the commercial obtains the unfair benefit of being reacted to by the child as if it were part of the program. Parents and critics alike also objected strongly to the pre-recorded tapes/films containing cartoon characters (e.g. the Flintstones on behalf of the vitamin bearing their name), especially when presented during breaks in the very program in which they appear. They reserved, however, their strongest attacks for the live program host who actually delivers the commercial on a children's program. Not only does this blur distinctions, they insisted, but more importantly in their view, it takes advantage of the special relationship that exists between the host and the child.

56. The filings in this proceeding did not provide complete data on the extent to which program talent was used or even the number of cases in which it occurs, and only a relatively small number of broadcasters directed themselves to a discussion of this point in their comments. Some viewed this method as inappropriate and indicated that they had or would discontinue the practice or never had engaged in it. Their comments indicated that they felt that the decision not to engage in this practice was the product of their own judgment as a licensee rather than being an absolute ethical requirement which all stations would be obliged to follow. Other licensees thought the use of program talent, including show hosts, was perfectly legitimate and did not have the negative implications ascribed to it. They defended their right to employ this method of presenting commercials and generally opposed any restriction of any commercial technique or presentation absent a finding of outright deception.[20]

57. As the comments indicate, program hosts, even when they do not deliver the commercial, were sometimes called upon to do a lead-in lead-out. In some programs the line separating the two techniques is hard to draw because the lead-in or out is extended. Generally, though the prepared copy is brief (e.g., the lead-in "* * * and now a word from our friends at * * *" or what amounts to little more than a tag line at the end). Based on its study of the locally originated "Captain Billy" program broadcast in Albuquerque, New Mexico, ACT charged that talent involvement in the commercials reached a damagingly high level. According to this study, Captain Billy regularly commented at length on the commercial itself or its theme, with the result being a second but often veiled commercial appeal. Thus, in addition to their objection on grounds of unfairly using the special rapport between host and child for commercial purposes, ACT expressed a second concern, that of overcommercialisation.

58. Broadcasters did not deal extensively with host selling and the like in their comments, but those that did comment defended it in terms of easing the transitions in the program and have attacked those who object for interfering with legitimate advertising methods utilized by the broadcaster. In their view, no purpose is served by insulating the child from the real world of business and advertising. While they did not necessarily argue in favor of a particular technique, they strenuously opposed regulatory intervention by the Commission or other forms of interference with what they saw as the broadcaster's freedom of choice in conducting his business.

59. The final technique mentioned in the comments is the tie-in. Those who supported this practice saw it as a perfectly sensible and legitimate act of cooperation be-

[19] This is not an industrywide view.

[20] In this regard, it should be noted that to the extent broadcasters agreed that government intervention in the realm of advertising was appropriate at all, they considered the Federal Trade Commission to be the appropriate agency to handle this function. Some licensees thought the FTC was overzealous; none of them considered it too timid or inadequate to the task.

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tween advertiser and programer and considered it quite logical to develop products which would be named after or otherwise connected with a program. Others, citing the example of "Hot Wheels", charged that these programs can become long-run commercials rather than programs. Moreover, they contended that in these situations it is the advertising that becomes dominant and the programing secondary so that the latter is tailored to fit the needs of the former. If this is carried far enough, the program ceases to be a program and becomes one long commercial. The critics did not charge that this extreme is frequently encountered; but they argued that this practice, even when it exists to a lesser degree, is of concern because it warps the program decisionmaking process.

60. *Special product categories.* Some ads were also attacked as promoting activities or approaches to life that are or could be harmful to children. Along this line the critics criticized the spending of vast sums to encourage the eating of snack foods and low nutritional cereals and charged that this has had a significant impact in terms of helping to cause the poor nutritional habits that have led to serious dietary deficiencies prevailing among Amercans, both rich and poor. Broadcasters and advertisers disputed any casual connection between the two and insisted that these products were not intended to supplant other food items in a person's diet. Instead, they saw a failure on the part of parents to assume their important responsibility for insuring good nutrition.

61. Vitamin advertising was attacked as creating false impressions about what constitutes a balanced diet and as encouraging the taking of vitamins as a substitute for proper eating habits. Moreover, these critics charged such ads as being part of a pattern of advertising that is creating a dangerous trend toward drug dependence and contributing to the worsening of the drug abuse problem which already afflicts our society. Finally, they charged that the techniques employed in advertising vitamins to children inevitably creates the danger of accidental overdoses.[14]

62. Broadcasters and advertisers insisted that there is nothing in these commercials to encourage or exaggerate such a risk. Rather, as with snack foods and cereals, they believed that parents must exercise caution to keep children from the harm which could result from misuse of the product. These, they contended, are legitimate and beneficial products and interfering in the right to present vitamin commercials is unwarranted. They rejected the idea that advertising for over-the-counter, medicines generally or children's vitamins particularly, has anything whatever to do with encouraging drug abuse.

63. *Amount of Commercial Matter.* Unlike a number of points at issue in this proceeding, the subjects of clutter and/or excessive commercialization were not cast in terms of distinctions between adult and children's programing. They objected to allowing more commercials and a greater number of interruptions on children's programing than in adult prime time. Broadcasters defended their current practices[15] as consistent with other non-prime time programing, and point out that a children's program in prime time is subject to the lower limit applicable to that time period. On this basis they concluded that current practices are non-abusive and in fact are necessary to insure adequate finances with which to produce quality programing.

[14] The docket contains a report of such overdosing resulting, according to the child's mother, from the child's desire to emulate what he saw in the commercial.

[15] These comments were filed before the changes in the Code limit had been proposed and thus are responding to the old limit of 8 minutes of commercial time and four interruptions per half hour, or double these figures for an hour.

APPENDIX B

PARTICIPANTS IN PUBLIC PANEL DISCUSSIONS ON CHILDREN'S TELEVISION

Eugene Accas, Leo Burnett Company, Inc., New York, New York (Panel II).

Richard C. Block, Vice-President and General Manager, Kaiser Center, Oakland, California (Panel I).

Stephen Bluestone, District of Columbia (Panel VI).

Fred Calvert, President, Fred Calvert Productions, California (Panel II).

Dr. Rene Cardenas, Bilingual Children's Television (Panel I).

Peggy Charren, Action for Children's Television, Boston, Massachusetts (Panel IV B).

Dr. Joseph G. Colmen, Education and Public Affairs, Washington, D.C. (Panel II).

Dr. John Condry, Department of Human Development, Cornell University, Ithaca, N.Y. (Panel III).

Mr. David Connell, Children's Television Workshop, Executive Producer, New York, New York (Panel I).

Mrs. Joan Ganz Cooney, President, Children's Television Workshop, New York, New York (Panel I).

Eliot Daley, Family Communications, Pittsburgh, Pennsylvania (Panel II).

Michael Eisner, Vice-President, Daytime Programming, ABC, New York, New York (Panel II).

Mr. Al Fields, Vice-President, Merchandising, Health Tex, Inc., New York, New York (Panel II).

Mr. Harry Francis, Director, Programming Services, Meredith Broadcasting, New York, New York (Panel I).

Dr. Frederick Greene, Office of Child Development, HEW, District of Columbia (Panel I).

Mrs. Ruth Handler, President, Mattel Toys, California (Panel VI).

Larry Harmon, Larry Harmon Pictures Corporation, New York, New York (Panel IV B).

Sherman K. Headley, General Manager, WCCO–TV, Minneapolis, Minnesota (Panel IV B).

Stockton Helffrich, Director, NAB Code Authority, New York, New York (Panel VI).

Ray Hubbard, WTOP–TV, Program Director, District of Columbia (Panel IV B).

Robert Keeshan, CBS, New York, New York (Panel IV B).

Arch Knowlton, Director, Media Services, General Foods Corporation, White Plains, New York (Panel III).

George Koehler, General Manager, Triangle Broadcasting, Philadelphia, Pennsylvania (Panel II).

Lorraine F. Lee-Benner, WCSC–TV, Charleston, South Carolina (Panel IV B).

Wanda Lesser, Charleston, South Carolina (Panel IV B).

Katherine Lustman, Early Childhood Education, Yale Child Study Center, New Haven, Connecticut (Panel IV B).

Donald McGannon, President and Chairman of the Board, Westinghouse Broadcasting, Inc., New York, New York (Panel VI).

E. Weeks McKinney-Smith, Owner, WDRX–TV, Kentucky (Panel III).

Dr. William Melody, Economist, University of Pennsylvania, Philadelphia, Pennsylvania (Panel IV B).

APPENDIX C

PARTICIPANTS IN ORAL ARGUMENTS ON CHILDREN'S TELEVISION

Peter W. Allport, On Behalf of Association of National Advertisers, Inc.

Ms. Lillian Ambrosino.

Dr. Juan Aragon, On Behalf of Bilingual Children's Television.

Rick Bacigalupo, On Behalf of Viewers Intent on Listing Violent Episodes on Nationwide Television.

Dr. Seymour Banks, On Behalf of American Association of Advertising Agencies.

Dr. Carolyn B. Block.

Stephen Bluestone.

Jerome S. Boros.

Warren Braren, On Behalf of National Citizens Committee for Broadcasting, Consumer Federation of America and Consumers Union of United States.

Richard Burdick, On Behalf of Creative Services Station WCBV–TV, Boston, Massachusetts.

Ms. Peggy Charren, On Behalf of Action for Children's Television.

Robert B. Choate, On Behalf of Council on Children, Media and Merchandising.

Philip C. Chin, Office of Asian American Affairs, HEW.

Ms. Katheryn M. Fong.

Mr. James Freeman.

Thomas N. Frohock, On Behalf of ABC, Inc.

Rosemary Galli, On Behalf of American Federation of State, County, and Municipal employees, AFL–CIO.

Michael J. Goldey, On Behalf of CBS, Inc.

Frederick C. Green, M.C., Associated Chief, Children's Bureau.

Anne Hanley, On Behalf of National Cable Television Association.

Mr. Larry Harmon.

Richard D. Heffner, On Behalf of Richard Heffner Associates, Inc.

Stockton Helfrich, On Behalf of National Association of Broadcasters.

Ms. Mary Ellen Hilliard.

Mrs. Carol K. Kimmel.

Mr. Manuel Larez.

Lorraine F. Lee-Benner.

Aaron Locker, On Behalf of Toy Manufacturers of America, Inc.

Richard Marks, On Behalf of Five Licensees.

Janis Marvin, On Behalf of American Women in Radio and Television, Inc.

Dr. William H. Melody, On Behalf of Annenberg School of Communications.

Howard Monderer, On Behalf of NBC.

Earle K. Moore, On Behalf of Action for Children's Television.

Paul J. Mundie, On Behalf of the Committee on Children's Television, Inc.

Robert E. O'Brien, On Behalf of O'Brien Communications.

Reverend Edward A. Powers, On Behalf of Division of Christian Education, United Church of Christ.

Ms. Evelyn Sarson, On Behalf of Action for Children's Television.

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Sister Leo Vincent Short, On Behalf of National Catholic Educational Association.

Mr. Robert Jay Stein.

John B. Summers, On Behalf of National Association of Broadcasters.

Arthur Weinberg, On Behalf of Three Licensees.

F. Kent Mitchel, Vice-President, Corporate Marketing Services, General Foods Corporation, White Plains, New York (Panel IV B).

Nell Morse, Co-Chairman, Children's Committee on Television, California (Panel II).

Jeanette Neff, Director of Educational Product Coordination, Children's Television Workshop, New York, New York (Panel IV B).

Dr. Everett Parker, Office of Communications, United Church of Christ, New York, New York (Panel VI).

Mr. Fred Pierce, Vice-President, Corporate Planning, ABC, New York, New York (Panel V).

Mr. Ward L. Quaal, President, WGN-TV, Chicago, Illinois (Panel V).

Mr. Christopher Sarson, Producer, WGBH, Boston, Massachusetts (Panel I).

Ms. Evelyn Sarson, Action for Children's Television, Boston, Massachusetts (Panel III).

Mr. Fred Silverman, Vice-President, Network Programming, CBS, New York, New York (Panel I).

Mr. Edmund Smarden, Carson-Roberts, Inc, Advertising, California (Panel V).

Dr. Ithiel de Sola Pool, Center for International Studies, MIT, Cambridge, Massachusetts (Panel VI).

Les Towne, Vice-President, Helfgott and Partners, New York, New York (Panel III).

Mr. Robert Thurston, Vice-President, Corporate Planning, Quaker Oats, Chicago, Illinois (Panel I).

Herminio Traviesas, Vice-President, Department of Broadcast Standards, NBC, New York, New York (Panel VI).

Dr. Scott Ward, Harvard University, Boston, Massachusetts (Panel IV B).

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NOTICE TO FEDERAL REGISTER READERS

As part of its continuing program to improve the quality of the daily FEDERAL REGISTER and CODE OF FEDERAL REGULATIONS, the Office of the Federal Register is soliciting the views of interested persons on the effectiveness of individual Federal Register documents and on regulations contained in the CODE OF FEDERAL REGULATIONS.

Our goal is twofold:

First—to make each document published in the FEDERAL REGISTER easily understandable, thus making compliance easier, more efficient, and less costly; and

Second—to identify and correct any existing Federal regulations which are obsolete, unnecessarily wordy, or unclearly stated.

We believe this effort is consistent with the objectives stated by President Ford in his October 8th speech on the economy in which he announced "a joint effort by the Congress, the executive branch and the private sector to identify and eliminate existing Federal rules and regulations that increase costs to the consumer without any good reason in today's economic climate."

The Office of the Federal Register welcomes your comments and suggestions. The survey blank below is provided for that purpose. All comments received will be maintained in a public docket and will be available for inspection in the Office of the Federal Register to any interested persons or agencies. Comments which point out the need for substantive changes in existing regulations also will be forwarded to the responsible agency.

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